

REFERENCE - CHAPTER 13

THE JUVENILE COURT AND OTHER LEGAL CONSIDERATIONS

Purpose and Mission of the Court

As designated by the Juvenile Code, the purpose of the Juvenile Court is to "facilitate the care, protection and discipline of children who come within the jurisdiction of the Juvenile Court." The Code also states that the law should be "liberally construed" which permits a great deal of discretionary power. Based on the law, the mission of the court is to ensure that "each child coming within the jurisdiction of the Juvenile Court shall receive such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state..." (RSMo 211.011)

Jurisdiction of the Court

The Juvenile Court has exclusive jurisdiction over children under 17 years of age. In cases where a child has been determined to be abused or neglected, jurisdiction can be extended to children under 18 years of age.

Another exception is when a child between the ages of 14 and 17 has committed an offense which would be considered a felony if committed by an adult. The child may then be certified as an adult and tried in the circuit court. (1)

Once the Juvenile Court has asserted jurisdiction, the court may retain jurisdiction until the child has reached the age of twenty-one. (2) Its authority over adults is limited to the following circumstances:

- The court may order parents to financially support their children in placement;
- The court may order physical, psychiatric, or psychological examinations of parents or guardians;
- Any person who interferes with a court order, or contributes to the delinquency of a child under the court's jurisdiction may be held in contempt;
- The termination of parental rights; and
- Adoptions.

Any other punitive action against the parents or other custodian must be taken through the circuit court.

The Hearing Process

The first step in the hearing process, after the court is informed that a child appears to be under the jurisdiction of the court, is for the court to hold a preliminary inquiry to determine the facts and whether the interests of the public or of the child require further action. Based upon that inquiry the court may make an informal adjustment or authorize the juvenile officer to file a petition. (3)

The types of hearings which the court may hold include:

Detention or protective custody hearings;

If the juvenile has been taken into detention the juvenile court must order a detention hearing within twenty-four hours. These are held to determine if the court has grounds to hold the child until the Adjudicatory hearing. The detention hearing must be held within seventy-two hours excluding Saturdays, Sundays, and legal holidays. (4)

- **Adjudication and dispositional hearings;**

Once the juvenile officer files a petition the case enters the hearing phase. There are two phases of the initial hearing procedure. These two phases may be addressed consecutively in the same hearing or separately in two hearings.

The ADJUDICATORY phase is conducted to determine if the juvenile or his parents have committed acts alleged in the petition (juvenile; criminal offenses, status offenses-parents; abuse/neglect) which allow the court to take jurisdiction over the child.

If the allegations are found to be true, the hearing enters phase two, the DISPOSITIONAL phase. In the dispositional phase, the court decides the most appropriate means to address the problem. This may include commitment to a public or private agency, supervision, examination by a psychiatrist or psychologist, participation in counseling, or any number of other dispositions.

- **Annual permanency planning reviews;**

These are judicial reviews that are conducted to objectively determine the continuing appropriateness of a child's placement, a child's progress while in care toward the short and long range goals, and a child's need for continued care.

- **Termination of parental rights (TPR) hearings;**

This is a legal proceeding which considers the need to sever the legal ties of a child from his/her parents, adoptive parents, or guardian.

In other types of hearings, the Juvenile Code states that the law should be "liberally construed." This permits a great deal of discretionary power. However, appellate courts in Missouri have repeatedly stated that in an action for termination of parental rights the statutory requirements will be strictly and literally applied. (5)

- **Adoption hearings;**

This is a legal proceeding that considers a petition to adopt a child, determines the suitability of the prospective adoptive family, and grants temporary or final legal custody of a child for the purpose of adoption.

As with TPR proceedings, the adoption statutes will also be strictly construed in some circumstances during adoption proceedings. (6)

- **Special hearings;**

Other matters heard by the court upon a petition by the parent, guardian, legal custodian, spouse, kinship or next friend.

Witnesses and Records

When the court receives a referral, at times the juvenile and/or parent will deny the report. When this occurs, a contested hearing is set and witnesses are subpoenaed. Witnesses may include school personnel, medical personnel, the police, Children's Division (CD) staff, etc. In order to introduce evidence contained in the records of these witnesses, it must be done under the Uniform Business Records Act. This is an exception to the Hearsay Rule. In order to comply with the Act it is necessary that:

- The custodian testify to the identity and mode of preparation of the record;
- The custodian testify that it was made in the regular course of business at or near the time of the act; and
- Sources, method, and time for the preparation of the record justify admission at the discretion of the court.

These records may also be admissible without the testimony of the custodian if they are filed with the proper affidavit.

The Expert Witness

CD staff may be required to testify in court to the facts of a case or in the role of an expert witness. Opinions and inferences of an expert witness are admissible when it has been established that the witness is professionally acquainted with, skilled, or trained in some field (i.e. child welfare, child custody) and therefore has knowledge or experience in matters generally not familiar to the public. For this reason, prior to testimony, CD staff may be asked to state their educational background, experience, etc. While CD staff may testify to matters which pertain to the "the best interests of the child," they are generally not qualified to testify to matters beyond their scope of expertise (medical opinions, mental condition/diagnosis of the parent, etc.)

Legal Rights

Certain legal rights in terms of the integrity of the family have been established by the Supreme Court via the process of legislative review. In general, these rights have been incorporated into state statutes. Such rights include, but are not limited to:

- **Constitutional Rights:** Applied to both parents and children. Parents have the constitutional right to rear their children as they see fit provided the child's general welfare is protected.

In 1967, the United States Supreme court ruled that the Fourteenth Amendment to the United States Constitution and the Bill of Rights applied in juvenile cases where a minor could be committed to a state institution. (7)

- **Right to Counsel:** The parent's right to counsel may vary from state to state. However, in almost all instances, children have a right to counsel and/or a Guardian ad Litem. (Guardian ad Litem 'GAL': an adult individual appointed by a court to protect the best interests of a minor child in a specific legal action; may be, but is not necessarily, an attorney). In order to be appointed as a 'GAL' the individual must have completed a training program in permanency planning. (8)

Under Missouri laws a parent is entitled to have an attorney appointed, if they are indigent, in actions for termination of parental rights. (9) In cases of child abuse or neglect, where the parent is a minor, mentally ill, or incompetent, the parent is entitled to appointment of a 'GAL'. (10)

- **Right to an Impartial Hearing:** Before children can be removed from a home, parents and children have the right to a hearing before an impartial judge.
- **Right of family integrity:** Before removal of a child, attempts should be made to strengthen and rehabilitate the family. (This is currently a Federal regulation as well; i.e., Efforts to Prevent Placement.) Therefore, courts will generally support a preference for the child to remain in the birth home. The Courts may set conditions such as cooperation with CD, mandated counseling, etc.

- Right to challenge, correct and expunge Child Protection Agency Records: This encompasses the destruction of unsubstantiated CA/N reports, the right to review CD records, and the right to challenge CD findings in Court.

Rights of the Child and Family

Family law, within the context of protective services and custody, is based upon the English Common Law's principle of "Parens Patriae." (11) Under the doctrine of "Parens Patriae," a court of equity exercising the Crown's paternal prerogative, could declare a child a ward of the Crown when the parents had failed to maintain the child's welfare. (12)

Modern legal interpretation focuses on the sanctity of the family. The court is empowered to protect "the best interests of the child." In this context, the court will place substantial weight on the following considerations:

- Love, affection, and emotional ties existing between parent and child;
- Presumption that birth parents have an inherent capacity and interest to best provide love, affection, and guidance, and the right to make educational, medical, disciplinary, and religious choices for the child;
- Length of time the child has resided with the parents and desirability of maintaining continuity; and
- Financial resources of parents are of secondary importance, provided basic necessities can be met with or without the assistance of outside resources.

Constitutional Rights and Child Protection Services

Fourth Amendment Rights (Search and Seizure) and Fifth Amendment Rights (Self-incrimination) are generally not viewed to be violated by Child Protection Services (CPS).

Visits to family homes are not seen as a violation of the Fourth Amendment when the visit is to:

- Ensure the welfare of the child;
- Privacy is respected;
- Neither forcible entry nor threats or false pretenses are used;
- Advance notice is given;

- Visits do not take place after normal working hours unless prearranged; and
- The visit is not aimed at criminal prosecution. Immediate entry with police assistance is allowable during serious emergencies.

Information gathered in the course of child protection services is not generally seen as self-incriminating if it is not acquired for the purpose of criminal proceedings. If the purpose of the investigation is criminal prosecution (13) or if the person being interviewed is under some sort of restraint (14), the Fifth Amendment Right against self-incrimination may come into force.

The Miranda warning, provided by police to persons under investigation, are warranted if the investigation is directed toward criminal prosecution and any element of apparent coercion or restraint of the individual exists. (15)

NOTE: CD staff shall not give Miranda warnings as this is a law enforcement responsibility.

Parental Responsibilities

The integrity of the family is protected by both legal and ethical rights. In contrast, parents have responsibilities as well as rights. When the welfare of the child is endangered, the state assumes the right to intervene. Children have a need for love, care, and protection. Within their ability and available resources, parents have a responsibility to provide:

- Food, shelter, clothing;
- Medical care;
- Educational opportunities;
- Supervision; and
- Moral and social guidance.

Invasion of Privacy

The state's obligation to protect children from harm balances the family's right to privacy. This is, however, predicated on the assumption that investigations are conducted under certain general guidelines:

- Efforts in gathering information should be made in a reasonable manner;
- There is no malicious intent involved;
- Only necessary information is gathered;
- The least intrusive means of acquiring information is preferred; and
- The public interest is served (i.e. state's obligation to protect children).

Standards for Child Protection Services

In general, the following guidelines should be encompassed in providing services to CD families. In the course of service delivery, such guidelines will serve the Children's Service Worker well in respecting the integrity of the family, maintaining a professional demeanor, and assisting the family to provide for the best interests of the child:

- Responsiveness to reports of suspected child abuse and neglect;
- Fair and competent assessment of the family's willingness and ability to protect a child;
- Reliance on the family's strengths and resources in casework planning;
- Direct and intensive efforts to enhance those strengths and to introduce families to appropriate resources;
- Recognition and assessment of personal feelings in the context of providing services. (The Children's Service Worker should seek supervisory assistance in dealing with common feelings that may interfere with effective service delivery such as anger, fear, anxiety, ambivalence, bias, prejudice, etc.);
- Ongoing assessment of the presence and level of risk to all children in the family; and
- Prompt follow-up (i.e., court referral) when the above efforts are unproductive and there is a clear danger to the child.

Professional Liability

"Negligence" is the failure to meet standards of conduct which have been established within the law for the protection of the public against unreasonable risks. Psychological negligence (Children's Service Workers may fall within this broad context that includes psychiatrists, psychologists, physicians, etc.) is an act or omission which does not meet

standards of reasonable care and skill expected of a practitioner in one of the above named professional human service fields.

In order to establish grounds for legal action, four elements are necessary. These include:

- A duty on the part of the practitioner;
- Breach of that duty;
- Actual injury or loss; and
- A causal relationship between the negligence of duty and the loss or injury.

"Duty" may be generally defined as a standard of performance derived from customs, laws, and/or standards of practice established by professional organizations in a particular field. The criteria which establish the duty expected of a particular practitioner would customarily be learned in the course of training and internship.

Traditionally, state and public agencies have been held immune from liability based on the sovereignty of the state. In part, this is based on the theory that representatives of state and governmental agencies cannot perform their duties in good faith if under the constant threat of civil suit. However, a representative of a public agency, in his/her personal capacity, may be sued if his/her action taken is unconstitutional or if that individual has not acted in good faith.

Therefore, the prudent practitioner would strive to learn and understand the customs, laws, and standards of his/her profession (this would include agency rules, regulations, and procedures, customary court expectations, etc.) as well as to faithfully adhere to such standards in the daily performance of his/her responsibilities and duties. However, it is also important for the prudent practitioner to keep abreast of changes and developments in the customs, laws and standards of his/her profession.

Acknowledgement: Raymond Legg, Attorney, Missouri Division of Legal Services, reviewed this chapter and supplied information.

Sources:

Professional Liability: Schwitzgebel, Robert L. and Schwitzgebel, R. Kirkland; Law and Psychological Practice; New York: John Wiley and Sons, Inc., 1980.

Child Welfare League of America, Standards For Child Protective Services, New York, New York: 1980.

National Committee for Prevention of Child Abuse, Child Abuse and the Law: A Legal Primer for Social Workers, New York, New York: 1980.

Schwitzgebel, Robert L. and Schwitzgebel R. Kirkland, Law and Psychological Practice. New York: John Wiley and Sons, Inc., 1980.

Footnotes:

- (1) Section 211.071, RSMo (1986).
- (2) Section 211.041, RSMo (1986).
- (3) Section 211.081, RSMo (1986).
- (4) Rule 111.07.b Mo.S.Ct. Rules (1988).
- (5) e.g. S.K.L. v. Smith 480 SW2d 119 (Mo.App. 1972).
- (6) e.g. In re E.C.N. 517 SW2d 709 (Mo.App. 1974).
- (7) In re Galt 387 US 1, 18, L Ed2d 527, 87 S.Ct. 1428 (1967).
- (8) Section 210.160.6, RSMo (1986).
- (9) Section 210.453, RSMo (1986).
- (10) Section 210.160.1 (2), RSMo (1986).
- (11) Davis, Rights of Juveniles 2dEd, Section 1.2 at 1-2 and State v. Couch 294 SW2d 636 Mo.App. 1956).
- (12) Davis, id.
- (13) State v. Williams 522 SW2d 641 (Mo.App. 1975).
- (14) United States v. De la Cruz 420 F.2d 1093 (7th Cir. 1970).
- (15) Caulfield, Legal Aspects of Protective Services for Abused and Neglected Children at 107 (1978).

MEMORANDA HISTORY: